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lee subsequently offered to exhibit her limb to the jury, but this did not operate to make the prior ruling improper. In announcing such ruling, the court said, 'At this present time I will not grant the request.' The motion should have been made after the appellee offered to expose her limb, to present any question."

WILLS.—REVOCATION AND REVIVAL.—There is scarcely a topic of the law on which there has been so much difference of opinion as there has been on the effect of the destruction of a will upon a prior will revoked by it. It has often been held that if the later will was merely inconsistent with the prior one, the destruction of the later permitted the former to take effect as if the later had never been made, because a will revoked is as if it had never been; but that if the later will contained an express revoking clause, the revocation was complete and immediate and not affected by the subsequent destruction of the revoking will. Other courts have held that the effect of the destruction of the later will upon the former depends in all cases on the intention of the testator in destroying to revive the earlier will or not, which may be proved by his declarations or other evidence. An entirely new theory, it would seem is advanced by the supreme court of Illinois in a recent decision, based on the ground that the statutes of that state do not authorize the revocation of wills by "other writing declaring the same." "Our conclusion is that, in as much as the later will executed by the testator must be presumed to have been destroyed by him in his lifetime, this loss or destruction has operated as a revival of the former will of Dec. 3, 1897, although the later will contained a revocatory clause." *Stetson v. Stetson*, (1903),—Ill.—, 66 N. E. Rep. 262.

RECENT IMPORTANT DECISIONS

AGENCY—ACTION BY UNDISCLOSED PRINCIPAL.—Plaintiff, a married woman, was erecting a building upon her own land and her husband was acting as her agent in supervising the building operations. Defendant, a roofing company, learning that the building was being erected, wrote to the husband saying that it was desirous of introducing its roof in "your town" and made an offer to put on "your roof." The husband replied in his own name accepting the offer to put on "my roof." The defendant gave to the husband a guarantee of "your roof" for a certain period. This guarantee being broken, the wife sues to receive damages upon it. *Held*, that she may maintain the action. *Abbott v. The Atlantic Refining Co.* (1902), 4 Ont. L. Rep. 701.

The defense was that by the use of the expressions "your roof," "my roof," etc., there was such a representation of the husband as the owner as excluded the right of the wife, as an undisclosed principal, to sue, and *Humble v. Hunter*, 12 Q. B. 310, 64 Eng. Com. L. was relied upon. See *MICHEM ON AGENCY* § 771. But the court held the case distinguishable, attaching importance to the use of the words "your town" as showing that the expression "your roof" was not intended to be exclusive and final.

AGENCY—AUTHORITY TO SELL LAND—NOTICE OF REVOCATION BY RECORD.—The defendant gave a written description of the land with a stated price to his agent, instructing him to sell the property. The price was after-

ward increased. The agent found a purchaser and gave a contract to sell. Five days previous, no notice of revocation having been given to the agent, the principal had sold the property and given a deed which was recorded two days before the attempted sale by the agent. For failure to execute a deed the agent's vendee brings an action for damages against the principal. *Held*, that the plaintiff cannot recover. *Donnan v. Adams* (1902), — Tex. —, 71 S. W. Rep. 580.

Two reasons were assigned by the court: (1), that the agent had authority only to find a purchaser, not to give a contract, and (2), in any event, the record of the deed to the purchaser was constructive notice of revocation of the agent's authority, under the statute providing that record of such an instrument should be taken "as notice of its existence to all persons." In support of the rule that authority to sell does not include authority to give a contract, but only to find a purchaser, the court cites *McCullough v. Hitchcock*, 71 Conn. 401, 42 Atl. 81; *O'Reilly v. Keim* (N. J.), 34 Atl. 1073; *Carstens v. McReavy*, 1 Wash. 359, 25 Pac. 471. Such authority might be granted by the express terms of the contract of agency or be inferred from the powers given, or the peculiar circumstances of the case. *Lyon v. Pollock*, 99 U. S. 668, 25 L. ed. 265; *Hunter v. Eastham* (Tex.), 67 S. W. 1080. An agency may be terminated by the destruction of the principal's interest in the subject matter,—and notice to the vendee before the attempted purchase will prevent his recovery. *Torre v. Thiele*, 25 La. Ann. 418; *Walker v. Dennison*, 86 Ill. 142; *Simonton v. First Nat. Bank*, 24 Minn. 216. It may be terminated by a dealing with the subject matter in a way inconsistent with the continued existence of the agency. *Aiken v. Taylor* (Tenn.), 62 S. W. 200. That record is not notice to all the world see *Maul v. Rider*, 59 Pa. St. 167. It has been held under the statutes of another state that notice by record does not operate as against the agent, merely against subsequent purchasers and creditors. *Loehde v. Halsey*, 88 Ill. App. 452. Under some statutes record of the revocation of a power of attorney is held to constitute notice without actual notice to the agent or those who had previously dealt with him. *Arnold v. Stevenson*, 2 Nev. 234.

AGENCY—GOOD FAITH—COMMISSIONS.—H was employed by the defendant to secure contracts for the installation of elevators. The agent was to have all he could obtain over a certain minimum price. This minimum he afterwards induced the defendants to decrease several thousand dollars by representations of competition. The agent finally concluded a contract at a price much greater than the original minimum fixed by the defendants. In an action brought by H's executor for his commissions under the modified contract of agency, the defendant asked the court to instruct the jury, that if the representations which induced this modification were to the knowledge of H false, and were of a kind to mislead and deceive a person of ordinary prudence, and if such representations did actually deceive and induce the defendant's manager to modify the original contract, then the plaintiff could not recover anything for the services of H. The court changed the instructions so as to make them read that the plaintiff could not recover the amount of the reduction so obtained, but merely whatever the agent could obtain above the price originally fixed upon. *Held*, that the instructions as given by the trial court were correct, and that the judgment should be affirmed. *Hale Elevator Co. v. Hale* (1903), — Ill. —, 66 N. E. Rep. 249.

Perhaps the distinction may be drawn between those cases in which commissions under the original contract are allowed to the agent, and those in which he is deprived of all rights under the contract because of bad faith, on the ground that in the former cases the agent at the time he acts in bad faith is